

Revised 03/06 WDNV

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

**FORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)**

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1. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: NOTE: If more than one plaintiff, this action and seek in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization. The only plaintiff considered will be the plaintiff who filed an application and Authorization.

1. DERRICK ANDERSON JUN 149

2. _____

-VS-

B. Full Name(s) of Defendant(s) NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.

1. BN SERENA

4. _____

2. TIMOTHY B. HOWARD (SHERIFF)

5. _____

3. CHRIS COLLINS (COUNTY EXECUTIVE)

6. _____

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION NOTE: To list additional plaintiffs, use this format on another sheet of paper.

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

DEFENDANT'S INFORMATION NOTE: *To provide information about more defendants than there is room for here, use this format on another sheet of paper.*

Name of Defendant: _____

(If applicable) Official Position of Defendant: _____

(If applicable) Defendant is Sued in _____ Individual and/or _____ Official Capacity

Address of Defendant: _____

Name of Defendant: _____

(If applicable) Official Position of Defendant: _____

(If applicable) Defendant is Sued in _____ Individual and/or _____ Official Capacity

Address of Defendant: _____

Name of Defendant: _____

(If applicable) Official Position of Defendant: _____

(If applicable) Defendant is Sued in _____ Individual and/or _____ Official Capacity

Address of Defendant: _____

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

- A. Have you begun any other lawsuits in **state or federal court** dealing with **the same facts involved in this action**?
Yes _____ No _____

If Yes, complete the next section. NOTE: *If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): DEBBIE ANDERSON ICN 149

Defendant(s): B.N. SECENT, Timothy B. Howard, Chris Collins.

2. Court (if federal court, name the district; if state court, name the county): SUPREME COURT

ELIE COUNTY

3. Docket or Index Number: 2011-3230

4. Name of Judge to whom case was assigned: HON. Christopher J. Burns

5. The approximate date the action was filed: February 11, 2011

6. What was the disposition of the case?

Is it still pending? Yes ☐ No ☐

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

☐ By court for failure to exhaust administrative remedies;

☒ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

☐ plaintiff

☒ defendant.

B. Have you begun **any other lawsuits in federal court which relate to your imprisonment?**

Yes ☐ No ☒

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. District Court: _____

3. Docket Number: _____

4. Name of District or Magistrate Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes ☐ No ☐

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

Dismissed (check the box which indicates why it was dismissed):

- ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- ☐ By court for failure to exhaust administrative remedies;
- ☒ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- ☐ By court due to your voluntary withdrawal of claim;

Judgment upon motion or after trial entered for

- ☐ plaintiff
- ☒ defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- | | | |
|--------------------|------------------------|-------------------------------|
| • Religion | • Access to the Courts | • Search & Seizure |
| • Free Speech | • False Arrest | • Malicious Prosecution |
| • Due Process | • Excessive Force | • Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect | • Right to Counsel |

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995). **Fed.R.Civ.P. 10(b)** states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

① **A. FIRST CLAIM:** On (date of the incident) ON 2/17/11, during EVENING MEDICATION
 defendant (give the name and position held of each defendant involved in this incident) CUNY NURSE

SEVENT failed to give me my Diabetes, Cholesterol, and
 other medications. she failed to sign the C-JEG-block
 did the following to me (briefly state what each defendant named above did): log book before

she passed out medications, which is policy + procedure.
Nurse SEVENT "Edited, and falsified" my medical chart
to make it look like she passed out my medications to
me." Sergeant DiJoseph investigated my case. HE MADE A
copy of the 2/17/11, C-JEG log book that proved she
didn't pass out medications. TWO DEPUTIES, (DEPUTY
WILLET), AND DEPUTY STEVENS), gave Sergeant DiJoseph

The constitutional basis for this claim under 42 U.S.C. § 1983 is: DENIAL OF MEDICAL TREATMENT. ✓
 OVER

The relief I am seeking for this claim is (briefly state the relief sought) \$100,000 COMPENSATORY,
AND \$250,000 PUNITIVE to deter defendants from this
type of conduct in the future.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☒ Yes ☐ No If yes, what was the result? GRIEVANCE

GRANTED.

Did you appeal that decision? ☒ Yes ☐ No If yes, what was the result? GRIEVANCE

GRANTED.

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

A. SECOND CLAIM: On (date of the incident) _____

defendant (give the name and position held of each defendant involved in this incident) _____

CONTINUED FROM PAGE 5

STATEMENTS THAT NURSE SERENA DID NOT SIGN THE LOG BOOK ON 2/1/11, AND THAT SHE DID NOT PASS OUT MEDS TO ME. NURSE SERENA DID NOT MEET HER MORAL, MEDICAL, OR LEGAL RESPONSIBILITY. SHE DID NOT USE HER LEARNING, AND SKILLS.

NURSE SERENA IS GUILTY OF MEDICAL NEGLIGENCE, AND MALPRACTICE. HER NEGLIGENCE CAUSED MY PHYSICAL INJURIES. HIGH BLOOD SUGAR, AND RELATED ILLNESSES. TIMOTHY B. HOWARD, AND CHRIS COLLINS (SHERIFF, AND COUNTY EXECUTIVE), ARE OPERATING THE ERLE COUNTY HOLDING CENTER IN AN "IMPROPER, NEGLIGENT, RECKLESS, AND CARELESS MANNER" BY HIRING INEXPERIENCED NURSES^{WHO} FAIL TO USE ANY DEGREE OF LEARNING OR SKILLS. NURSE SERENA CAME FROM AN OUTSIDE AGENCY, AND IS NOT FAMILIAR WITH THE LAYOUT OF THE JAIL, THEREFORE, SHE CAN'T FIND HER PATIENTS TO GIVE MEDICATIONS, OR CARE FOR THEM. THIS CAUSES A LIFE THREATENING, AND DANGEROUS SITUATION BECAUSE A LOT OF INMATES, LIKE MYSELF, TAKE MEDICATIONS FOR CHRONIC ILLNESSES LIKE DIABETES, HIV, HEART PROBLEMS, STROKES, CANCER ETC..... NURSE SERENA'S INABILITY TO LOCATE PATIENTS TO GIVE THEM MEDICATIONS, AND CORRECTLY PLACE THE MEDICATIONS ON THE CORRECT MEDICATION TRAY, AND CARDS, CREATES A HAZARDOUS, AND UNSAFE ENVIRONMENT. BN SERENA'S NEGLIGENCE

Continued From Page 5

② impugning her integrity, and truthfulness. However, Sheriff Howard's administrators at the Erie County Holding Center, display a disregard to my complaints concerning R.N. SERENA, and a disregard towards Sgt. M. DiJoseph's memorandum dated 2/20/11, (attached hereto), which clearly shows R.N. SERENA's medical negligence in this case, and a disregard towards Deputy L. Stevens' statement attached to Sgt. M. DiJoseph's memorandum, which she clearly states that she asked R.N. SERENA if she had medication for CHARLIE SEG, and R.N. SERENA stated NO. Deputy L. Stevens then stated, "ARE you sure you don't have medication for CHARLIE SEG?" R.N. Nurse SERENA responded, "I do not have Meds for back there". Even though Sgt. DiJoseph conducted an investigation, and received a statement from Deputy L. Stevens, which clearly proves R.N. SERENA violated my rights, she was not disciplined by Howard's administrators, suspended or fired. Nor has R.N. SERENA accepted responsibility for her medical negligence, and reckless, and careless misconduct. R.N. SERENA intentionally lied, edited, and falsified my medical charts, failed to give me my medications, and was not in compliance

CONTINUED FROM PAGE 5

WHEN SHE FAILED TO SIGN THE CHARTER SEG logbook BEFORE PASSING OUT MEDS, WHICH SHE DIDN'T, BUT FABRICATED CHARTS TO MAKE IT LOOK LIKE SHE DID ON 2/1/11. SHERIFF HOWARD MUST NOT DEFEND, AND INDEMNIFY ANY OF ITS EMPLOYEES FOR INTENTIONALLY VIOLATING AN INMATE'S CIVIL RIGHTS. R.N. SERENA'S NEGLIGENCE, AND CARELESSNESS, AND RECKLESSNESS CLEARLY EXPLAINS MY INJURIES ASSOCIATED WITH DIABETES. HOWARD'S ADMINISTRATORS AT THE ERIE COUNTY HOLDING CENTER TOOK MEASURES TO HELP CONCEAL R.N. SERENA'S RECKLESS MISCONDUCT, LIED ABOUT IT, AND DID NOT REPORT IT TO THE PROPER ADMINISTRATORS. SHERIFF HOWARD, AND COUNTY EXECUTIVE CHRIS COLLINS, OPERATED THE ERIE COUNTY HOLDING CENTER IN AN "IMPROPER, NEGLIGENT, RECKLESS, AND CARELESS MANNER, AS EVIDENCED BY THEIR DISREGARD FOR INMATES SUCH AS MYSELF, AND THEIR MOVES TO THWART U.S. JUSTICE DEPARTMENT INTERVENTION INTO THE ERIE COUNTY HOLDING CENTER. THESE TWO (2) OFFICIALS, "STONE-WALLED" MY EFFORTS TO FILE GRIEVANCES, WHICH DENIED ME ACCESS TO THE COURTS.

did the following to me (briefly state what each defendant named above did): _____

The constitutional basis for this claim under 42 U.S.C. § 1983 is: _____

The relief I am seeking for this claim is (briefly state the relief sought): _____

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? _____ Yes _____ No If yes, what was the result? _____

Did you appeal that decision? _____ Yes _____ No If yes, what was the result? _____

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

*\$100,000 COMPENSATORY AND \$250,000 PUNITIVE, TO DETER
THE DEFENDANTS FROM THE TYPE OF CONDUCT IN THE
FUTURE.*

Do you want a jury trial? Yes ☒ No ☐

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 1/13/12
(date)

NOTE: Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.

Denise Anderson

Denise Anderson

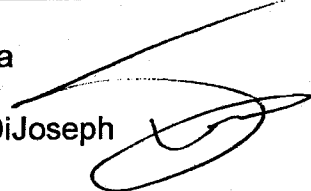
Signature(s) of Plaintiff(s)

ERIE COUNTY SHERIFF'S OFFICE



MEMORANDUM

TO: Chief T. Diina

FROM: Sgt. M. DiJoseph 

DATE: 2/20/11

RE: I/M Derrick Anderson

Sir, on 2/19/11 I did receive a grievance from I/M Anderson, Derrick concerning him not receiving his PM medication on 2/17/11. I did speak with inmate Anderson and attempted to resolve his issue.

I immediately contact medical and did speak with RN Perez about his medication not being received. RN Perez did state to me that agency RN "Serena" did log in inmate Andersons medical chart that she dispensed his medication to him on 2/17/11.

I did check the C-Seg. log book and noted that RN Serena did not sign the log book and no medication pass was logged. I then questioned the Deputy that was working that shift. Deputy L. Stevens stated to me that, RN Serena was passing meds on C-Constant Observation and did not pass meds on C-Seg. Deputy Stevens stated to me that she even questioned RN Serena about Meds for C-Seg and RN Serena stated I have no meds for back there.

I did include copies of the Log book from the shift and a statement from Deputy L. Stevens

ERIE COUNTY SHERIFF'S OFFICETO Sgt. DiJosephDATE 2/19/11FROM Dep. L. StevensSUBJECT Charlie Seg

On 2/17/11 this Deputy was assigned to work Charlie Seg. At approximately 20²⁰, nurse Serena was passing medication on Charlie Constant Watch. This Deputy asked Nurse Serena if she had medication for Charlie Seg. Nurse Serena responded "no". This Deputy then stated "are you sure you don't have medication for Charlie Seg". Nurse Serena responded "I do not have meds for back there." End of report.

-LStevens-1385-



Grievance Form - Part II

Facility: Erie County Holding Center

Grievance #: 11G-017

Name of Inmate ANDERSON, DERRICK # 149

Date Part I was received: 3/2/2011

Decision of the Grievance Coordinator:

Number of Additional Sheets Attached (Yes)

(Including specific facts and reasons underlying the decision)

Grievance sustained, action requested granted in part. Per our verbal discussion earlier this morning, your medical concerns were addressed to your satisfaction. Health Department Administration have been forwarded all information pertaining to this incident. Please note, I have included the two subsequent grievances you filed, as they were concerning the same issue. Please contact me immediately if there are any further issues.

Signature of Grievance Coordinator

[Signature]

Chief Thomas Diina

Date: 3/3/11

☐ I have read the above decision of the Grievance Coordinator

☒ I agree to accept the decision

☐ I wish to appeal to the Chief Administrative Officer

Date: 3/3/11

Grievant Signature:

[Signature]

[Signature]
3/3/11 1440

Date: 3/3/11

Decision of the Chief Administrative Officer

Number of Additional Sheets Attached ()

(including specific facts and reasons underlying the decision)

Signature of the Chief Administrative Officer:

Date: _____

PURSUANT TO SECTION 7032.5(A), ANY GRIEVANT MAY APPEAL ANY GRIEVANCE DENIED BY THE FACILITY ADMINISTRATOR, IN WHOLE OR IN PART, TO THE STATE COMMISSION OF CORRECTION.

☐ I have read the above decision of the Chief Administrative Officer

☐ I agree to accept the decision

☐ I wish to appeal to the Citizen's Policy and Complaint Review Council

Grievant Signature: _____

Date: _____

Submission to the Citizen's Policy and Complaint Review Council

I HAVE ISSUED THE GRIEVANT A RECEIPT INDICATING THE DATE THE APPEAL HAS BEEN SUBMITTED TO THE CITIZEN'S POLICY AND COMPLAINT REVIEW COUNCIL. I HAVE ENCLOSED WITH THIS GRIEVANCE, THE INVESTIGATION REPORT AND ALL OTHER PERTINENT DOCUMENTS.

Signature of the Grievance Coordinator: _____

Date: _____

